

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ OCT 23 2009  
P.M.  
TIME A.M. *[Signature]*

-----X  
NICOLA ANTONIA DEMARCO,

Plaintiff,

- against -

REPORT & RECOMMENDATION  
08 CV 3055 (RRM)(LB)

THE CITY OF NEW YORK; THE CITY OF NEW  
YORK DEPARTMENT OF EDUCATION; NEW  
YORK CITY MAYOR MICHAEL BLOOMBERG;  
NEW YORK CITY SCHOOL'S CHANCELLOR  
JOEL KLEIN; RENEE DAVID; THERESA EUROPE;  
PHILIP COMPOSITO; NANCY RYAN; MICHAEL  
BEST; MICHAEL CARDOZO; NEW YORK CITY  
DEPUTY MAYOR DENNIS WALCOTT;  
NEW YORK STATE GOVERNOR DAVID PATTERSON;  
and ELEANOR ELOVICH GLANSTEIN,

Defendants.

-----X  
**BLOOM, United States Magistrate Judge:**

Plaintiff filed the instant *pro se* action on July 25, 2008, (document 1), and plaintiff filed an amended complaint on July 24, 2009, (document 9). The Court's records do not reflect that plaintiff has filed proof that defendants have been served with process. Rule 4(m) of the Federal Rules of Civil Procedure provides:

"If a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period."

On August 10, 2009, the Court extended the time for plaintiff to serve defendants until September 25, 2009, (document 10). The Court's Order explicitly stated "if service has not been effected by [September 25, 2009] or plaintiff fails to show good cause why such service has not been effected, [the Court] will recommend that this action should be dismissed without prejudice."

*Chm*

(Document 10.) Plaintiff has failed to file proof of service or show good cause why service has not been made on defendants. Accordingly, it is respectfully recommended that plaintiff's complaint should be dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

#### **FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION**

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Such objections (and any responses to objections) shall be filed with the Clerk of the Court. Any request for an extension of time to file objections must be made within the ten-day period. Failure to file a timely objection to this Report generally waives any further judicial review. Marcella v. Capital Dist. Physician's Health Plan, Inc., 293 F.3d 42 (2d Cir. 2002); Small v. Sec'y of Health and Human Services, 892 F.2d 15 (2d Cir. 1989); see Thomas v. Arn, 474 U.S. 140 (1985).



Dated: October 22, 2009  
Brooklyn, New York

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LOIS BLOOM  
United States Magistrate Judge